

DISABILITY RIGHTS ADVOCATES  
2001 CENTER STREET, FOURTH FLOOR  
BERKELEY, CALIFORNIA 94704-1204  
(510) 665-8644

SID WOLINSKY (CA Bar No. 33716)  
JULIA PINOVER (CA Bar No. 255088)  
DISABILITY RIGHTS ADVOCATES  
2001 Center Street, Fourth Floor  
Berkeley, California 94704-1204  
Telephone: (510) 665-8644  
Facsimile: (510) 665-8511  
TTY: (510) 665-8716  
Email: general@dralegal.org  
  
DANIEL MASON (CA Bar No. 54065)  
JOSE UMBERT (CA Bar No. 227318)  
ZELLE HOFMANN VOELBEL MASON & GETTE LLP  
44 Montgomery Street, Suite 3400  
San Francisco, California 94014  
Telephone: (415) 693-0700  
Facsimile: (415) 693-0770

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

WESTERN REGIONAL ADVOCACY  
PROJECT, a nonprofit organization, and  
CALVIN DAVIS, on behalf of himself and all  
other individuals similarly situated, and  
ANTHONEY COLEMAN, on behalf of  
himself and all other individuals similarly  
situated.

Plaintiffs,

v.

MAYOR GAVIN NEWSOM, in his official  
capacity, BOARD OF SUPERVISORS OF  
SAN FRANCISCO COUNTY, in their official  
capacity,

Defendants.

**Case No.: CV 08 4087 MMC**

**CLASS ACTION**

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' REQUEST FOR  
JUDICIAL NOTICE IN SUPPORT OF  
MOTION TO DISMISS**

Hearing Date: TBD  
Time: TBD  
Place: Courtroom 7, 19th Floor  
  
Trial Date: Not Set

1 Plaintiffs Western Regional Advocacy Project, Calvin Davis, and Anthony Coleman  
 2 (“Plaintiffs”) hereby oppose Defendants’ Request for Judicial Notice in support of their Motion  
 3 To Dismiss Complaint For Failure To State A Claim. Defendants request judicial notice of (1)  
 4 several portions of the San Francisco Administrative Code; (2) all materials concerning  
 5 Proposition N appearing in the Ballot Pamphlet for the November 2002 General Election; and (3)  
 6 “California Health and Welfare Agency and Department of Social Services, Food Stamp Manual,  
 7 Division 63.” Although some of these materials may be *subject* to judicial notice, Plaintiffs  
 8 oppose the request to the extent Defendants seek to use these materials to contradict the  
 9 allegations of the Complaint, which must be accepted as true in the context of a motion to  
 10 dismiss.

11 A court may take judicial notice of “matters of public record,” but may not take judicial  
 12 notice of a fact that is “subject to reasonable dispute.” *Lee v. City of Los Angeles*, 250 F.3d 668,  
 13 689-90 (9th Cir. 2001) (citing Fed.R.Evid. 201(b)) (district court improperly took judicial notice  
 14 of disputed facts stated in public records). For example, a court may not properly take judicial  
 15 notice of public documents related to regulations in order to judicially notice disputed facts  
 16 reflected in those documents, such as whether the adopting authority acted with discriminatory  
 17 motive in adopting such regulations. *Gallagher v. San Diego Unified Port Dist.*, No. 08-CV-  
 18 886-IEG-RBB, 2008 WL 4492609 at \*1 n.2 (S.D. Cal. Oct. 1, 2008).

19 As set forth in Plaintiff’s Opposition to the Motion To Dismiss, Defendants cannot  
 20 prevail on their motion by asking the Court to look to the text of administrative regulations,  
 21 ballot arguments, or any other public records for the purpose of refuting the Complaint’s detailed  
 22 allegations that the manner in which Defendants *implement* these various ordinances, or that the  
 23 way in which they provide or deny services to homeless persons *in practice*, discriminates  
 24 against the disabled. While Defendants accuse Plaintiffs of alleging legal conclusions,  
 25 Defendants actually request the Court to disregard Plaintiffs’ factual allegations and to accept  
 26 Defendants’ bare assertions that Defendants’ conduct is mandated by law. These matters  
 27  
 28

1 comprise the central disputed *factual* issues that go to the heart of this lawsuit, however. They  
2 cannot and should not be resolved on this motion through judicial notice.

3 Plaintiffs respectfully request that the Court deny Defendants' Request for Judicial  
4 Notice to the extent it seeks judicial notice of facts contradicted by the allegations of the  
5 Complaint.

6  
7  
8 Dated: November 14, 2008

9 SID WOLINSKY  
10 JULIA PINOVER  
11 DISABILITY RIGHTS ADVOCATES

12 By: /s/ Sid Wolinsky  
13 SID WOLINSKY

14 Attorneys for Plaintiffs  
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